



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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September 14, 2012

Office Of The Executive

Dennis McLerran
Regional Administrator
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Mail Code: RA-140
Seattle, WA 98101

Dear Mr. McLerran:

On behalf of the Columbia River Inter-Tribal Fish Commission's (CRITFC) member tribes - the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe, I am expressing our concerns with recent challenges to the use of tribally-based fish consumption rates in setting human health criteria based standards in the Pacific Northwest. Tribal members are subjected to far greater hazards from contaminants in fish than the general public due to the larger amount of fish they consume because of their traditional ways of life. The EPA has a trust responsibility to ensure that the environmental standards established by states are sufficiently protective of our regional waters so that contamination is below levels that pose a risk to tribal members.

When CRITFC hosted the meeting between EPA Administrator Jackson and the Columbia Basin tribes at our offices in June 2012, tribal leaders from the Columbia River Basin spoke eloquently about the positive water quality rulemaking changes in Oregon that were largely based on tribally-based fish consumption rates. The tribes believed these consumption rates would be applied to future water quality rulemaking processes in Washington and Idaho. The tribes thanked Administrator Jackson for her role in fulfilling federal trust responsibilities and her commitment to Environmental Justice. However, events that have transpired since June lead us to believe that the rulemaking process is in danger of overlooking tribal concerns.

In a letter dated July 16, 2012, Washington Department of Ecology's Director, Ted Sturdevant, in apparent acquiescence to challenges from the industrial sector, chose to alter the rulemaking process rather than accept a statewide default fish consumption rate for sediment clean-up levels. In addition, Ecology removed the sections on "Preliminary Recommendations" and on "Washington Indian Tribes and Treaty Reserved Rights" from their Fish Consumption Rate Technical Support Document because the document was

“not designed to resolve the policy issues associated with using that information to make regulatory decisions.” While CRITFC appreciates the complexity involved in determining an appropriate fish consumption rate for cleanup standards for sediment and surface water, the removal of these sections gives the impression that the choice of a fish consumption rate is a debatable value and not legally required to be protective of tribal communities.

In a letter dated August 6, 2012, Idaho Department of Environmental Quality’s Director, Barry Burnell, proposed to meet EPA’s Human Health Criteria requirements by conducting “an Idaho specific fish consumption survey...to ensure that the Idaho criteria are protective.” I would like to point out that CRITFC’s 1994 fish consumption survey has already proven that native people and others in Idaho and downstream from Idaho rivers eat significantly more fish than average citizens and that Idaho’s proposed rate of 17.5 grams/day was not protective. If another survey were to be completed today, it would capture the impact of tribal efforts that have significantly improved fish returns and fish availability to Idaho residents since 2002. There is a strong expectation that tribal fish consumption rates will be higher than they were in the early 1990s. In the meantime, the adoption of more protective water quality standards in Idaho should not be delayed by the time required to conduct and analyze data from another survey.

Because of recent Washington and Idaho events, CRITFC recommends the initiation of a multiple state approach in establishing regional water quality standards. Multiple state agreements are not without precedent. Recently (August, 2012) Ohio, Kentucky, and Indiana formed a multi-state partnership that offers economically viable options in meeting Clean Water Act agreements through a water quality trading plan. As you may know, the Willamette Partnership coalition received a 2012 award from the Natural Resources Conservation Service to develop regional best management practices quality standards and a Pacific Northwest nutrient trading plan for Oregon, Washington, and Idaho. Ecology’s Director Sturdevant is also attempting to convene an alternative process to achieve better and faster reductions in toxic pollution by finding innovative new strategies that address the problem.

A regional agreement is envisioned that establishes common human health criteria for all state level rulemaking processes. The agreement should specifically recognize the vast areas within this region that are part of our tribal usual and accustomed fishing sites. A regional fish consumption rate would serve to eliminate the redundancy and workload from over-committed environmental technical and legal staffs, and would allow all of our governments to focus limited resources on more pressing issues such as toxics cleanup, restoration and developing innovative green alternatives. The tribes do not want this request to further delay the adoption of long overdue, more protective standards. CRITFC therefore requests that EPA take a leadership role in fostering a regional acceptance of a default fish consumption rate of at least 175 grams per day.

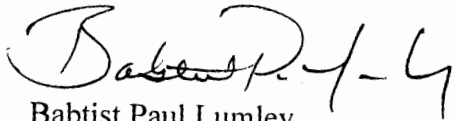
We all share the same waters and desire for a toxic free environment. We also need to work together to address the issue of toxic contaminants in the Columbia Basin in a timely manner. Appropriate environmental standards are a first step in moving forward,

toward the development of a sustainable relationship between the industrial, forestry, and agricultural sectors and the waterways that are the lifeblood of the Pacific Northwest fisheries.

I realize that this is a complex request. In that regard, the tribes would like to discuss this with you at the Affiliated Tribes of Northwest Indians meeting the week of September 24 and develop a realistic timeframe for this strategy.

Thank you for consideration of this important issue. If you have any further questions please contact me or Dianne Barton, PhD at 503-238-0667.

Sincerely,

A handwritten signature in dark ink, appearing to read "Baptist Paul Lumley", with a stylized flourish at the end.

Baptist Paul Lumley
Executive Director

Attachment

Cc: Mary Lou Soscia, U.S. Environmental Protection Agency
James Woods, Tribal Liaison, U.S. Environmental Protection Agency
Ted Sturdevant, Washington Department of Ecology
Barry Burnell, Idaho Department of Environmental Quality